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FACEBOOK, INC., a Delaware corporation  
7

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 In re FACEBOOK PPC Advertising  
13 Litigation,

Master File Case No. C 09-03043 PJH

14 This Document relates To:  
15 All Actions.  
16

**DECLARATION OF PETER M. COLOSI  
IN SUPPORT OF FACEBOOK, INC.'S  
OPPOSITION TO PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION**

17  
18 I, Peter M. Colosi, declare as follows:

19 1. I am an attorney with Cooley LLP, counsel to Facebook, Inc. ("Facebook") in the  
20 above referenced matter. I make this declaration in support of Facebook's Opposition to  
21 Plaintiffs' Motion for Class Certification ("Opposition"). I am an active member in good  
22 standing of the California State Bar. I have personal knowledge, except as otherwise noted, of the  
23 facts stated herein and if called as a witness, could and would competently testify thereto.

24 2. Attached hereto as EXHIBIT A is a true and correct copy of the Declaration of  
25 Robert Kang-Xing Jin, a Facebook Engineer, In Support Of Facebook's Opposition to Plaintiffs'  
26 Motion for Class Certification.

27 3. Attached hereto as EXHIBIT B is a true and correct copy of the Declaration of  
28

1 John McKeeman, a Facebook Advertising Operations Manager, In Support Of Facebook's  
2 Opposition to Plaintiffs' Motion for Class Certification.

3 4. To date, Facebook has produced over 200,000 pages of documents and emails.  
4 Included in this is: (i) over 78,000 pages (representing over 16,000 emails and attachments)  
5 coming exclusively from the engineers responsible for implementing and updating Facebook's  
6 filtering system; (ii) over 4,000 pages of internal Facebook documentation relating to the precise  
7 technical details of the filter system, including all 214 past versions of an internal Facebook  
8 document detailing the then-current state of the filtering system (termed the "wiki") and  
9 comparisons between each version of the wiki and the previous version; and (iii) over 25,000  
10 pages of correspondence between Facebook and more than 5,000 advertisers relating to advertiser  
11 inquiries regarding, among other things, questions on which clicks they have been billed for.

12 5. After Steven Price's April 13, 2011 deposition, Price's counsel forwarded to  
13 Facebook several reports from Price's Google Analytics and StatCounter programs which had  
14 been discussed at the deposition. Over the next several months, Facebook repeatedly requested  
15 Price's server logs, which had also been discussed at the deposition. After several apparent  
16 hardware problems were addressed, Price's counsel informed Facebook that "it is doubtful that  
17 [Price] will be able to segregate out the server log information that is specific to the Drive Down  
18 Prices ads run on Facebook from other non-Facebook related data that is also on the server logs."  
19 When pressed, Price's counsel admitted that "there does not appear to be a way to [separate out  
20 traffic to his other business from traffic to drivedownprices.com] within [the] system." Attached  
21 as **EXHIBIT C** is a true and correct copy of the referenced correspondence.

22 6. In RootZoo's initial complaint, RootZoo alleged that "[d]uring the period  
23 November 2007 to early June 2008, Plaintiff contracted with Facebook for PPC advertisements."  
24 (See Dkt. No. 1 at ¶ 35, filed July 7, 2009.) [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 7. Plaintiffs' Second Amended Complaint attaches screen shots of various Help



Center pages Plaintiffs claim to have reviewed and relied upon when they contracted for advertising with Facebook. (See Second Amended Consolidated Class Action Complaint, Docket No. 101, filed September 24, 2010 (“SAC”) at ¶¶ 35, 36, 37, 52, 56, 66, 76, and 95 and Exhs. B, C, and D.) Specifically, the SAC claims that “[p]rior to contracting with Facebook for advertising, RootZoo reviewed and relied on the statements set forth on Facebook’s website regarding its advertising services” and cites SAC “Exhibits B-D.” (SAC at ¶ 56.)

8. On November 17, 2010, Facebook produced a 53-page document detailing the [REDACTED] a true and correct copy of which is attached hereto as **EXHIBIT E**.<sup>1</sup> According to this document, each SAC exhibit RootZoo claimed it reviewed prior to advertising with Facebook was not actually available on facebook.com [REDACTED]

9. On December 15, 2010, Judge Fogel granted Facebook’s Motion to Dismiss portions of Plaintiffs’ Second Amended Complaint (See Order Granting Motion to Dismiss Second Amended Consolidated Class Action Complaint, Docket No. 135, filed December 15, 2010 (“Order”)). In so doing, the Court gave Plaintiffs thirty days to amend their complaint. (*Id.* at 15:7-9.) On January 17, 2011, Plaintiffs’ counsel emailed counsel for Facebook informing Facebook “that Plaintiffs will not be amending their complaint” and that Facebook should proceed to answer only “Counts One [UCL claim for invalid clicks], Three [breach of contract claim for invalid clicks] and Four [declaratory judgment].” Plaintiffs’ counsel specifically did not ask Facebook to answer, and Facebook did not answer, Count Two, the UCL claim for fraudulent clicks. Attached as **EXHIBIT G** is a true and correct copy of the referenced correspondence.

<sup>1</sup> This document has been authenticated by Facebook 30(b)(6) witness Jordan Blackthorne. (See Blackthorne Dep. Tr., Nov. 17, 2010, at 105:20-23 [REDACTED])

[REDACTED], a true and correct copy of which is attached hereto as **EXHIBIT F**.)

10. Facebook has served multiple discovery requests seeking the precise number of invalid clicks Plaintiffs believe they were improperly charged for, the amount of any alleged overcharges, and the factual basis underlying this belief. Plaintiffs have, at three different points, refused to answer such questions by proffering the same form objections that these interrogatories “prematurely seek[] expert discovery” and/or that each is a “premature contention interrogatory.” (See Plaintiff Steven Price’s November 17, 2010 Objections and Responses to Defendant Facebook, Inc.’s First Set of Interrogatories at 2:5; 3:17-18; 8:11-13; 8:23-25; 9:9-10; 10:7-9; 11:23-24; 13:4; and 14:12-13, a true and correct copy of which is attached hereto as **EXHIBIT H**; Plaintiffs’ May 6, 2011 Supplemental Objections and Responses to Defendant Facebook, Inc.’s First Set of Interrogatories at 2:7-8; 3:21-23; 4:24; and 5:4, a true and correct copy of which is attached hereto as **EXHIBIT I**; and Plaintiffs’ August 11, 2011 Objections and Responses to Defendant Facebook, Inc.’s Second Set of Interrogatories at 3:11-17, 4:22-5:1, 6:3-8, 7:7-12, 8:16-22, and 9:18-24, a true and correct copy of which is attached hereto as **EXHIBIT J**.)

11. Much of Facebook’s production to date was completed by the time Plaintiffs served their August 11, 2011 Objections and Responses. In fact, by August 1, 2011, Facebook had produced just over 183,000 pages of documents.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 24th day of October, 2011 in San Francisco, California.

/s/ Peter M. Colosi  
Peter M. Colosi

Filer’s Attestation: Pursuant to General Order No. 45, §X(B), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from its signatory.

Dated: October 24, 2011

Respectfully submitted,

/s/ Whitty Somvichian  
Whitty Somvichian  
Counsel for Facebook, Inc.